IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

RPFC.No. 35 of 2003()

MC.35/2002 OF FAMILY COURT, MANJERI
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REVISION PETITIONER/RESPONDENT:

KODENGADAN MUHAMMEDALI,
S/O.ABDULLA, KODENGADAN HOUSE,
THODIMUTTY, BHOODANAM P.O,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS/PETITIONERS:
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1. ADUKATH FATHIMA SUHARA,
D/O.ADUKATH CHEKKU,
ADUKATH HOUSE, BHOODANAM P.O,
MALAPPURAM DISTRICT.

2. RESHID-MINOR (REPRESENTED BY
1ST RESPONDENT – GUARDIAN – MOTHER)

ADV. SRI.K.P.MUJEEB FOR R1
PUBLIC PROSECUTOR SRI. C.K. SURESH

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 9.2.2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HEMA, J.

R.P. (F.C.) NO. 35 OF 2003

Dated this the 9th day of February, 2007.

O R D E R

The revision petitioner was directed by the Family Court to pay maintenance to his wife and child, who are respondents 1 and 2 herein, at the rate of Rs.400/- and Rs.350/- per month respectively. The said order is under challenge in this revision.

2. The fact that respondents 1 and 2 are legally wedded wife and child of the revision petitioner is not disputed. The fact that respondents are unable to maintain themselves is also not under dispute. It is an admitted fact that petitioner is having income, but according to him, he is only getting a salary of Rs.1000/- per month, as evidenced by Exhibit D1. According to him, this income is not sufficient to pay maintenance to respondents.

3. Heard. Perused records. It is proved in this case, as revealed from records that revision petitioner is getting salary, as evidenced by Ext.D1, whereas the wife

and child are unable to maintain themselves. But his case is that he used to send money orders to his wife, at the rate of Rs.300/- on certain occasions and hence, there is no neglect to maintenance. He has no case that he used to send any amount to respondents regularly for their maintenance. Sending of money orders occasionally to wife or child by husband/father, that too, at the rate of Rs.300/- may not be sufficient to hold that a husband/father is maintaining them.

4. Learned counsel appearing for the revision petitioner argued that, the revision petitioner is getting only Rs.1000/- as salary as evidenced by Exhibit D1, salary certificate issued by RW2. There is also no evidence to show that revision petitioner is having any other source of income. But his salary is not at all sufficient to pay Rs.750/- to respondents as ordered. Petitioner has another wife and children who are also to be maintained and hence his salary of Rs.1000/- is not sufficient to comply with the order passed. An order can be passed against a person

under Section 125 (1) only if he has sufficient income to pay maintenance, but in this case petitioner has no sufficient income, it is argued.

5. On a close reading of Section 125 of the Code I cannot accept the above arguments, for more than one reason. A reading of Section 125 (1) of the Code shows that the expression used therein is not "sufficient income" but it is "sufficient means". A person cannot wriggle out from his liability to maintain stating that he has no "sufficient income" to pay maintenance. The question to be considered under Section 125 (1) is not whether a person has any "sufficient income" but, what is relevant is whether he has "sufficient means". "Means" as per dictionary means, any resource to raise money. The salary is thus, only one of the resources. A property also is a resource from which a person can raise money. A person cannot merely say that property has no means. A healthy body is also a resource since he can raise money by doing manual work.

6. It is also most pertinent to note that a close reading of Section 125 itself reveals that the order which a court can pass is to "make" maintenance allowance and "pay" the same. The expression used in Section 125 of the Code is "to make a monthly allowance for the maintenance....., and to pay the same". therefore, the court can direct a person "to make" a monthly allowance for the maintenance and to "pay" the same.

7. Therefore, even though monthly salary of petitioner is only Rs.1000/-, court will be justified in passing an order directing revision petitioner to make monthly allowance for the maintenance of his wife and child and pay the same. Even if Rs.1,000/- is not sufficient income the court can direct the husband/father to "make" monthly allowance for the maintenance of his wife and pay it to her. The fact that he has another wife and children to be maintained and the income is not sufficient etc are no reason to dissuade the court from doing so.

8. In this context, it must be borne in mind that

revision petitioner must have been raising some money from some other source to maintain his second wife and children since Rs.1,000/- may not be sufficient to meet their expenses. It has also been brought out in evidence that he was able even to maintain a telephone in his own name, though he gave excuses that it has actually been installed in his name by his brother-in-law. The trial court, for sound reasons, rejected this explanation.

9. A person who is able to maintain a telephone, who is able to maintain three children and himself, certainly he is a person who may be having some other source other than Rs.1,000/- as evidenced by Ext.D1. Therefore, the evidence in this case establishes that the revision petitioner is having sufficient means i.e he has sufficient resource to raise money. Therefore, he is liable to pay maintenance under Section 125 (1) of the Code. So, the revision petitioner shall pay the maintenance allowance to respondents from out of the salary or he shall raise money and pay the same to respondents. It cannot be said the

quantum of allowance ordered is excessive. A wife and child who was aged 5 ½ years at the time of filing of the petition, would require Rs.400/- and Rs.350/- respectively for their subsistence. There is no reason to interfere with the order under challenge.

This revision petition is dismissed.

(Sd/- **K.HEMA, JUDGE)**

smp

/True copy/

P.A to Judge